

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

BAUM HYDRAULICS
CORPORATION, a Delaware
corporation,

Plaintiff,

VS.

UNITED STATES OF AMERICA,
Defendant.

Case No. 8:04CV256

MEMORANDUM AND ORDER

Pending before me in this complex tax and transferee-liability case is a motion for summary judgment. After examining the motion and briefs, and because I was concerned with the question of subject matter jurisdiction, I requested additional briefing.

Now that I have received that additional briefing, I am persuaded (at least for now) that this court has subject matter jurisdiction under 28 U.S.C. § 2410. The plaintiff and the government both assert that the court has subject matter jurisdiction (filings 43 & 44). Indeed, the plaintiff admits that its complaint “is not an attack on the merits of the underlying tax” and does “not involve the legitimacy of the underlying tax determination.” (Filing 43 at 4.) As a result of that concession, my primary concern has been eliminated.

Regarding the motion for summary judgment, it will be denied if only because the complexity of this case counsels against a summary disposition. I also note that the plaintiff did not comply with the local rules when submitting its brief. See NeCivR56.1(a)(2) (for the statement of facts, requiring short numbered paragraphs with pinpoint citations to a properly authenticated record as required by NeCivR 7.1(a)(2)). That alone is reason enough to deny the motion. Furthermore, I am not now persuaded that the government's prior litigation conduct can properly be used

to prevent it from asserting transferee liability against the plaintiff. Similarly, I see no reason on this record why the government cannot assert transferee liability under 28 U.S.C. § 3304(b) even though it might not be able to do so under 26 U.S.C. § 6901; that is, I do not believe the two statutes are inconsistent or mutually exclusive.

As a result,

IT IS ORDERED that the plaintiff's motion for summary judgment (filing 23) is denied.

June 29, 2005.

BY THE COURT:

s/Richard G. Kopf
United States District Judge